

WEST BRANCH LITTLE SPOKANE RIVER WATERSHED COMMITTEE

Meeting Summary

Monday, April 23, 2007

Riverside Fire Station, 3818 E. Deer Park – Milan Rd., Riverside, WA

FINAL

Bryony opened the meeting at 6:30 p.m.

Attendees Present: Burt Covert (alternate for Bill Harmon), Dolores Storms, Dan Peterson, Dick Anderson, Lynne Anderson, Gil McGee, Greg Sweeney, Howard Rowley, Bev Rowley, Jeff Storms, Jamie Short, Sally Storms, Jill Short, Luke Short, Jim Peterson, John Harkness, Linda Cannon (alternate for Karen Averitt), Kathleen Werr, Darrell Johnson, Mary Sterling, Mike Carney, Mike Lithgow, Russ Fletcher, Pam Zarko, Rick Noll, Rob Lindsay, Thomas Wimpy, Tammera Kirk, Sandra Roath, Josh Roath, Steve Petroni, Tammy Magnuson, Brian Farmer.

Introductions: Everyone introduced themselves. Bryony asked everyone to sign-in to the meeting and to check and edit the information on the sign-in sheet. Bryony introduced herself as the Committee's facilitator. Bryony's contact information is: Bryony Stasney, bstasney@golder.com, 208-676-9933 (office) and 208-755-1010 (cell).

March 26th 2007 Meeting Summary: The summary was approved by consensus of those present with the following changes / discussion:

- Page 2 – discussion occurred on listing information on project intent / funding in chronological order. Bryony reviewed the information included in paragraphs 1, 2 and 3 of page 2 and noted that the December 21, 2005 letter addressed to Senator Karen Fraser and the current grant contract will be used to guide the scope and allocation of funds for this project. Those present agreed that they were OK making no changes to the March 2007 meeting summary.

The final March 2007 meeting summary will be posted on the WB LSR Committee website at: <http://www.spokanecounty.org/wqmp/projects/ASP/WestBranch.asp>.

Public Comment:

- Linda Cannon noted that the Sacheen Betterment Association has mailed out a straw poll to help determine management actions for Sacheen Lake. Linda provided copies for those interested. Only those who have received the poll by mail are eligible to vote.

Agenda Review:

Those present agree with the following changes to the agenda:

- Move review of the WBLSR Watershed issues to before the break.
- Add an agenda item to discuss Little Spokane River navigability; i.e., discussion of *Griffin v. Holman* (Supreme Court 1900) and related case law.

- Add an agenda item to discuss allocation of the \$15,000 in the current grant for on-the-ground project implementation in the WB LSR Watershed.
- Add an agenda item to discuss projects that could be proposed to the WRIA 55/57 Watershed Implementation Team (WIT) for ranking and potentially for funding by Ecology over the next two years.
- Add confirmation of the final operating procedures to the membership agenda item.

Little Spokane River Navigability:

Bryony passed around copies of the Memorandum of Understanding (MOU) between the Washington State Department of Ecology (Ecology), Washington State Department of Fish and Wildlife (WDFW) and Pend Oreille County related to *Management of Water Resources in Lakes of the Little Spokane River Watershed* (signed and dated December 2005). Russ noted that this MOU was developed because Pend Oreille County felt that the issues identified in the MOU were not addressed sufficiently in the WRIA 55/57 Watershed Plan.

Brian Farmer from Ecology noted that a group of people that are now involved in the WB LSR Committee requested in 2005 that the Washington State Attorney General's office review *Griffin v. Holman* (Supreme Court 1900) and related case law and prepare a written opinion on the jurisdiction of local and state government.

Brian asked the Committee to review and consider three questions that were originally drafted by Ecology and WDFW for submission to the Washington State Attorney General's office. Ecology would like guidance from the group today as to whether or not they would like the Attorney General's office to pursue this effort. After discussion on the three questions, the Committee agree by consensus that they would like Ecology to pursue this effort, to pose the three questions (listed as numbers 1 through 3 below) to the Attorney General's office and would like Ecology to add a fourth question (listed as number 4 below).

1. What is the geographic restriction, if any, to *Griffin v. Holman* (Supreme Court 1900) and the applicability of this case to all the tributaries to the Little Spokane River?
2. What, if any, subsequent case law supports or contradicts the court's definition of navigability and ownership of the fishery within the Little Spokane River and what is the definition of navigable water?
3. How does the public trust doctrine apply in light of the court's decision in *Griffin v. Holman* (Supreme Court 1900)?
4. What are the liability issues for landowners who own land alongside the Little Spokane River and any tributaries that are covered by the court's decision in *Griffin v. Holman* (Supreme Court 1900)?

WRIA 55/57 Detailed Implementation Plan – Status Update:

Rob Lindsay noted that the WRIA 55/57 Watershed Implementation Team (WIT) is going through the implementation matrix to define actions for the current recommendations. The WIT meets twice a month and the goal is to complete the matrix by August or September for initial review by the WIT. At the last meeting, the WIT talked about domestic exempt wells. The WIT is looking forward to receiving implementation actions from this Committee. Greg noted that the WRIA 55/57 WIT has agreed to postpone discussion of Instream Flow Needs for the Little Spokane River (Section III of the WRIA 55/57 Plan).

Bryony provided an 11-page memo handout entitled, “WRIA 55/57 DIP Recommendations” that included the following:

1. 2-page listing of the general recommendations in the WRIA 55/57 Plan for which the WB LSR Committee may want to propose actions;
2. 1-page example format for the implementation actions entitled, “Recommendation R5.d.”
3. 8-pages of tables that document the policies, issues and recommendations in the WRIA 55/57 Plan for which the WB LSR Committee may want to propose actions.

Bryony noted that she has spoken to the WRIA 55/57 contractor who is assisting the WRIA 55/57 WIT with their Detailed Implementation Plan (DIP). The WIT is developing implementation actions that address the recommendations included within the WRIA 55/57 Watershed Plan. The WRIA 55/57 WIT is expecting the WB LSR Committee to propose actions for recommendations that are relevant to the WB LSR issues.

At this stage, the WB LSR Committee is unable to propose new recommendations. The recommendations in the current version of the WRIA 55/57 Watershed Plan (that are now being addressed by the WIT in the detailed implementation planning process) were approved by the WRIA 55/57 Planning Unit and County Commissioners for Spokane and Pend Oreille Counties. New recommendations may be proposed by the WB LSR Committee to the WRIA 55/57 WIT at the time of a WRIA 55/57 Watershed Plan Update.

The WRIA 55/57 WIT would like to see actions for consideration from the WB LSR Committee by the end of July 2007. To achieve this, Bryony recommended the Committee consider the following process:

1. Review the WB LSR Committee verbatim issue list (dated 042307) and confirm those issues that are relevant to the WRIA 55/57 Plan issues / recommendations.
2. Consolidate, prioritize and develop actions to address the WB LSR issues that are relevant to the WRIA 55/57 Plan issues / recommendations.
3. Propose actions to the WRIA 55/57 WIT that are agreed to by consensus (or vote if necessary) of the WB LSR Committee and that are relevant to recommendations within the WRIA 55/57 Watershed Plan.
4. After the July 2007 deadline has passed, move back to the remaining WB LSR issues.

Those present agreed with this approach.

Rob noted that the WRIA 55/57 Watershed Planning process is one of a variety of funding sources for implementation of actions to address the WB LSR issues. The WRIA 55/57 Watershed Planning process has limited state funding (\$125,000 for the next two years and \$50,000 for the two years following this). Rob encouraged this group to consider other funding sources beyond the WRIA 55/57 Watershed Planning process.

Bryony noted that other potential funding sources include the Columbia River Management Program for water storage projects (if a portion of the water is released to the Columbia River at low flow times) and the Total Maximum Daily Load (TMDL) process for water quality actions. Bryony noted that there are no water quality recommendations in the WRIA 55/57 Watershed Plan. Therefore the WB LSR Committee will be unable to propose to the WRIA 55/57 WIT actions to address water quality issues in the WB LSR Watershed.

Russ noted that the Pend Oreille Conservation District has just received a grant for riparian restoration projects that can be used on the WB LSR in Pend Oreille County.

Bryony noted that it will be beneficial to have the approval of the WRIA 55/57 WIT for actions since this approval may provide additional points on some grant applications. It is therefore important for the WB LSR to collaborate as much as possible with other groups to help with obtaining grant funding from a variety of sources.

WRIA 55/57 Watershed Implementation Team – Project Ranking for Funding:

Rob noted that Ecology provided funding at the beginning of this year to the WRIA 55/57 WIT for two implementation projects: 1) a water conservation project; and, 2) additional streamflow gaging in the Little Spokane River watershed (managed by Spokane County Conservation District). Rick Noll of the Spokane County Conservation District (SCCD) informed the group that the SCCD plans to re-establish the gages on the West Branch of the Little Spokane River previously operated by Washington State University (WSU). These gages are located on Moon Creek, Fan Lake, above Eloika Lake and below Eloika Lake. In addition, the SCCD plans to install new gages at the Sacheen Lake outlet and gages to measure lake level at Sacheen Lake and Eloika Lake. Rick said that he would bring a map to the next meeting that shows the locations of the gaging sites within the Little Spokane River watershed. John noted that beaver dams have influenced the amount of water flowing in to and out of Diamond Lake. Since Moon Creek is the outlet of Diamond Lake, the Moon Creek flows may be influenced by these upstream beaver dams.

Rick informed that group that the SCCD also operates flow gages on the East Branch of the Little Spokane River at Elk and at Deer Park – Milan Road. The equipment used logs the water elevation every hour. SCCD staff download this data regularly and develop stage-discharge rating curves to establish the relationship between water

elevation and flow. Significant maintenance is required for these sites. Also, the SCCD would like to upgrade equipment if funds are available to do this. The current contract to operate the WB LSR gages is for \$50K and was signed in February / March 2007. The contract for this work will end after June 2007.

Bryony informed the group that Ecology has some additional funding for the WRIA 55/57 WIT for implementation and that the WIT will be identifying and prioritizing projects for implementation with this funding at a May 16 2007 workshop. The WB LSR Committee members present agreed by consensus that they would like to recommend for funding to the WRIA 55/57 WIT a project to continue flow gaging on the West Branch of the Little Spokane River watershed. Bryony said that she would send an email with this recommendation to Reanette Boese (Spokane County). Jaime asked that Rob Lindsay bring the list of proposed projects to the next WB LSR Committee meeting.

Review WB LSR Watershed Issues:

Bryony asked those present to post their watershed issues on pieces of sticky paper under the appropriate categories. Large pieces of white paper were placed around the room with geographic category headings (e.g., Entire WBLSR Watershed, Tributaries to Diamond Lake, Diamond Lake etc.). This is the second opportunity for the Committee to post their issues. The first opportunity for the Committee to post their issues occurred at the March 26, 2007 WB LSR Committee meeting.

Review WRIA 55/57 Implementation Matrix:

Bryony handed out a copy of the draft verbatim list of issues posted at the March 23, 2007 WB LSR Committee meeting. Bryony also referred the group to the 11-page memo handout entitled, "WRIA 55/57 DIP Recommendations" and reviewed the recommendations with the group.

Bryony noted that she has reviewed the WB LSR issues posted at the March 23, 2007 WB LSR Committee meeting and compared the issues to the WRIA 55/57 recommendations. Bryony noted that she has highlighted the WB LSR Watershed issues that are similar or have relevance to the WRIA 55/57 recommendations. Due to the July 2007 timeline for this group to propose actions to the WRIA 55/57 group for potential incorporation into the WRIA 55/57 DIP, Bryony said that she would like the group to focus the next meeting on consolidating these issues and coming to agreement during the May, June and July meetings on recommended actions to address these WB LSR Watershed issues. Actions agreed upon by the Committee will be forwarded on at the end of July 2007 to the WRIA 55/57 WIT for their consideration and inclusion within the WRIA 55/57 DIP.

Bryony noted that it is important for the Committee to understand that they are unable to change or add language to the WRIA 55/57 policies, issues or recommendations and that the Committee only has the ability at this time to propose implementation actions that are relevant to the recommendations that are within the WRIA 55/57 Plan that was approved by the Spokane and Pend Oreille County Commissioners in January 2006.

For example, water quality is not addressed in the WRIA 55/57 Plan and therefore this Committee will not be able to propose actions to address water quality issues to the WRIA 55/57 WIT. Water quality actions may be addressed by TMDL groups in the future. Rick Noll noted that the TMDL is waiting on Ecology and WSU to finish the load allocations for the Little Spokane River (due in several months time).

Bryony said that she would like the WB LSR Committee to complete the following homework in preparation for the May 21, 2007 meeting:

1. Review the verbatim list of WB LSR Watershed issues which Bryony will email / mail to the Committee during the week of April 30, 2007. This list will include issues posted during both the March and April 2007 Committee meetings.
2. Review the 11-page memo handout entitled, "WRIA 55/57 DIP Recommendations" to become familiar with the WRIA 55/57 recommendations.
3. Identify (for example, with a highlighter) the WB LSR Watershed issues that are similar or have relevance to the WRIA 55/57 recommendations.
4. Come to the May 21, 2007 WB LSR Committee meeting prepared to agree on this issue list and consolidate / prioritize these issues. Implementation actions will then be developed for these issues.

Public Comment:

- Russ confirmed that the area slated for purchase by WDFW using the House Budget proposal of \$3.6 million (noted in the 032007 Spokesman Review article) is in Rustler's Gulch. Sandra Roath noted that this land borders her property. It is now owned by a group of people and the major shareholder has recently passed away. Sandra Roath said that the land has not yet sold and that WDFW and Stimpson Lumber are interested in the property. The property includes some critical wildlife habitat and Blue Lake (which may be a good site for consideration of additional water storage). Sandra Roath said that she could find out more and report to the Committee at the next meeting.
- Jeff asked Jaime if there is any additional news on Senator Morton's allocation of funds (\$75,000) for this group. Brian noted that this is included in Department of Community Development's (CTED) budget. Ecology plans to inform CTED of this and will report to the Committee at the next meeting.
- The Committee discussed removing one of the public comment agenda items. After discussion, the Committee decided to leave both public comment agenda items, one at the beginning and one at the end of the meeting.

2007 WB LSR Watershed Implementation Project(s):

Russ noted that Senator Morton, WDFW and Ecology have received a request for letters of support for the Sacheen Lake group to use \$15,000 from the current grant funding to hire a hydrologist. Senator Morton forwarded this request to Russ. Russ said that he researched the grant funding requirements and responded saying that the \$15,000 is allocated for activities (i.e. projects on the ground) not for studies. Russ also noted that between 1990 and 1995, Ecology funded a little over \$600,000 to complete studies related to Sacheen Lake. Russ said that he has asked Bryony to scan the Sacheen Lake reports so that they can be posted on the project website.

Russ listed the following implementation projects for consideration:

- Purchase and installation of 90-degree elbows and wire screens for beaver tubes that are in place
- Contractor maintenance of beaver tubes that are in place
- Installation of water control structures
- Culvert replacement
- Reducing debris dam heights
- Removal of debris fields
- Wetland restoration projects

Work in / around the water is best completed between July 1 and September 30. A hydraulic permit approval may be required from WDFW.

Bryony informed the Committee that they need to identify and agree upon implementation project(s) that can be covered by the \$15,000. This funding must be applied to a project on the ground (i.e., it cannot be used for a study / assessment) related to flooding. The project can occur anywhere within the West Branch of the Little Spokane Watershed. At the next meeting Bryony said that the Committee will work on identifying potential projects and prioritizing the project(s) for implementation with this available \$15,000.

Membership and Operating Procedures:

Bryony reviewed and confirmed the membership list with the Committee. Bryony will bring the membership list again to the next meeting. Tammera Kirk requested that she be a member now that she has attended three consecutive Committee members. The group approved Tammera's membership.

Bryony confirmed that all those present approve the Operating Procedures that were emailed and mailed out for review on April 2, 2007. With this consensus approval, the Operating Procedures are now final and will be posted on the website at: <http://www.spokanecounty.org/wqmp/projects/ASP/WestBranch.asp>.

Next Meeting:

- Next meeting will be held between **6 – 9 pm** on Monday May 21, 2007 at the Riverside Fire Station, 3818 E. Deer Park – Milan Road, Riverside, WA.
Note the earlier start time and three hour meeting.
- Agenda items for the next meeting will include:
 - Agreement of WB LSR Watershed issues to address for the WRIA 55/57 DIP.
 - Consolidation of WB LSR Watershed issues to address for the WRIA 55/57 DIP.
 - Identification of a 2007 implementation project to be covered by the \$15,000 available in the current grant funding.
 - Membership review.
- Tasks:
 - Rick Noll will bring information and a map showing the Little Spokane River gaging locations.
 - Ecology will confirm the budget allocation for 2008 for the WB LSR Committee.
 - Committee members will review the WRIA 55/57 Plan recommendations and the WB LSR Watershed verbatim issue list (that includes issues posted at the March and April 2007 Committee meetings) and come prepared at the May 2007 meeting to confirm issues to address between May and July 2007.
 - Committee members will come prepared to identify and prioritize 2007 implementation projects to be covered by the current \$15,000 grant funding.
 - Rob Lindsay will bring a list of the projects that the WRIA 55/57 WIT will be considering for Ecology funding.
 - Sandra Roath will provide an update on the sale of the Rustler's Gulch property.
- Announcements:
 - Jaime noted that she will be out on maternity leave for the next few meetings and that there will be different Ecology staff members attending the next series of meetings.
 - Eloika Lake is hosting a canoe and kayak poker paddle on Saturday May 19, 11 am – 2 pm at the south end boat launch.

Adjourn:

- Bryony adjourned the meeting at 8:50 pm.
- Digital recording files for this meeting will be mailed to Carolyn Russel and to the POCD. Digital recording files of this meeting are:
 - WBLSR Committee 042307a.wav
 - WBLSR Committee 042307b.wav